

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**December 7, 2017**

Diane M. Fremgen  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2016AP2074**

**Cir. Ct. No. 2014CV546**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**MARGARET PULERA,**

**PLAINTIFF-APPELLANT,**

**V.**

**TOWN BOARD OF THE TOWN OF JOHNSTOWN,  
ROCK COUNTY, WISCONSIN,**

**DEFENDANT-RESPONDENT,**

**DENNIS LOGTERMAN, CARMEN CORWITH  
AND ROBERT MAWHINNEY,**

**DEFENDANTS.**

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APPEAL from a judgment of the circuit court for Rock County:  
BARBARA W. MCCRORY, Judge. *Affirmed.*

Before Lundsten, P.J., Blanchard and Kloppenburg, JJ.

**Per curiam opinions may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

¶1 PER CURIAM. Margaret Pulera appeals the circuit court’s grant of summary judgment in favor of the Town Board of the Town of Johnstown and its three members (collectively, the “Board”). For the reasons set forth below, we affirm the judgment of the circuit court.

### BACKGROUND

¶2 This case arises out of changes to the intersection of County Highway M and County Line Road, which divides Rock and Walworth Counties. As a result of the changes, a segment of County Line Road was removed, and an unnamed road in the Town of Johnstown in Rock County was discontinued. Pulera, a resident of Walworth County, filed an action for declaratory judgment, alleging that the Board failed to comply with the notice requirements of the open meetings law with respect to two of its meetings, held on September 26, 2012, and October 8, 2012, and a Rock County Public Works Committee meeting held on October 11, 2012. *See* WIS. STAT. § 19.84 (2011-12).<sup>1</sup> Pulera further alleged that the Board failed to follow the procedures set forth in WIS. STAT. ch. 82 pertaining to town highways.<sup>2</sup> In addition to declaratory judgment, Pulera sought to void all

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

<sup>2</sup> Pulera also initiated two other actions, Walworth County Case No. 2014CV871 and Rock County Case No. 2014CV1232, seeking certiorari review of the highway orders that were recorded as a result of a decision made, at a joint meeting of the town boards of Richmond and Johnstown held on September 9, 2014, to discontinue the unnamed road and segment of County Line Road that are at issue in this case. Both certiorari actions were dismissed as untimely because Pulera had failed to file her certiorari petition within 30 days of the “final determination”

(continued)

actions taken as a result of the meetings at issue. The parties filed cross-motions for summary judgment and, after briefing, the Rock County Circuit Court issued a written decision granting the Board's motion for summary judgment. Pulera now appeals.

#### STANDARD OF REVIEW

¶3 This court reviews summary judgment decisions de novo, applying the same methodology and legal standard employed by the circuit court. *Palisades Collection LLC v. Kalal*, 2010 WI App 38, ¶9, 324 Wis. 2d 180, 781 N.W.2d 503. The legal standard is whether there are any material facts in dispute that entitle the opposing party to a trial. *See Lambrecht v. Estate of Kaczmarczyk*, 2001 WI 25, ¶24, 241 Wis. 2d 804, 623 N.W.2d 751.

#### DISCUSSION

¶4 Pulera has limited the issues on appeal to whether the Board meeting held on October 8, 2012, and the Rock County Public Works Committee meeting

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under WIS. STAT. § 68.13(1) (2013-14). *See Pulera v. Town of Richmond and Town of Johnstown*, Nos. 2015AP1016 (circuit court no. 2014CV1232) and 2015AP1119 (circuit court no. 2014CV871), unpublished certification (WI App Dec. 23, 2015).

Pulera appealed, and this court consolidated the appeals and certified to the supreme court the issue of what event triggers the 30-day period under WIS. STAT. § 68.13(1). *See Pulera*, Nos. 2015AP1016 and 2015AP1119, unpublished certification. The supreme court reversed, holding that a party seeking certiorari review of a town board's decision to lay out, alter, or discontinue a highway must file the petition for certiorari review within 30 days of the recording of the highway order by the register of deeds. *Pulera v. Town of Richmond*, 2017 WI 61, ¶¶1-3, 375 Wis. 2d 676, 896 N.W.2d 342. The supreme court remanded the cases for certiorari review in either Walworth or Rock County, "as the parties may agree." *Id.*, ¶3. As of the date of this opinion, the matter is pending in Walworth County on remand. The issues being litigated in the certiorari action are beyond the scope of this appeal.

held on October 11, 2012, were properly noticed (1) under WIS. STAT. ch. 82, and (2) under the open meetings law.

¶5 We turn first to Pulera’s argument that the Board did not comply with WIS. STAT. ch. 82. Specifically, she asserts that the public notice requirements of WIS. STAT. § 82.10(3) and (4) were not met.

¶6 We need not decide whether the notice requirements of WIS. STAT. § 82.10(3) and (4) were met because notice under that statute is required only under specific circumstances that are not present here. The notice requirements in § 82.10 are applicable only in instances where “[s]ix or more resident freeholders” have made an application to the town board to have a highway laid out, altered, or discontinued, or where the town board has initiated “the process of laying out, altering, or discontinuing a town highway by the introduction of a resolution.” WIS. STAT. § 82.10(1) and (2). Here, the summary judgment record does not contain any such application or resolution. Rather, the record reflects that, at its September 26, 2012 meeting, the Board decided to draft a letter to Rock County requesting that it reconsider the changes to the intersection at issue. Thus, the summary judgment record does not support Pulera’s argument that the Board was required to follow the notice requirements of § 82.10(3) and (4) but failed to do so.

¶7 We turn next to the issue of whether the meetings held on October 8 and October 11, 2012, complied with the notice requirements of the Wisconsin open meetings law. *See* WIS. STAT. § 19.84. As to the meeting on October 8, 2012, the summary judgment record establishes that the Board complied with the requirements of § 19.84. In an affidavit submitted in opposition to Pulera’s summary judgment motion, town clerk Mary Mawhinney averred that she posted notice “over 24 hours” prior to the start of the October 8, 2012 meeting, as

required by § 19.84(3). The notice took the form of the meeting agenda, and included the “time, date, place and subject matter of the meeting,” as required under § 19.84(2). Mawhinney posted the agenda in the three locations where she customarily posted notices: on the door of the Johnstown Community Center, at Johnstown Food Center, and at Scharine Farm Implement. Although Pulera asserts in her appellant’s brief that no notice of the October 8, 2012 meeting was posted on the Town of Johnstown’s website prior to the meeting, Pulera concedes that a website notice is not required under § 19.84. In light of all of the above, we are satisfied that the summary judgment record does not present any genuine issue of material fact as to whether the October 8, 2012 meeting of the Board was properly noticed under the open meetings law.

¶8 We turn next to Pulera’s argument that the Board violated the open meetings law by failing to give notice of its collective attendance at a meeting of the Rock County Public Works Committee held on October 11, 2012. It is undisputed that the Board did not post notice of the October 11, 2012 meeting. The circuit court concluded, and the Board argues in its respondent’s brief, that no notice was required because the attendance of the Board members at the October 11, 2012 meeting fell within the chance gathering exception to the open meetings law.

¶9 Under the Wisconsin open meetings law, a “meeting” is defined as “the convening of members of a governmental body for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body.” WIS. STAT. § 19.82(2). A meeting is rebuttably presumed to be “for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body,” if one-half or more of the body’s members are present. *Id.* Expressly excluded from the definition of the term “meeting” is “any social or chance

gathering or conference” which is not intended to avoid the open meetings law.  
*Id.*

¶10 The summary judgment record contains undisputed deposition testimony to support the conclusion that the attendance of all three Board members at the October 11, 2012 meeting was a chance gathering.

¶11 Board member Dennis Logterman testified that he had planned to go to the meeting as a representative of the Board because the other two members could not make it. Logterman testified that he believed Board member Robert Mawhinney, who is a farmer, could not make it because he was farming, and that Board member Carmen Corwith was doing construction work and could not get the day off.

¶12 Board member Corwith testified that, as it turned out, he managed to rearrange his schedule and thought he would “just stop over” at the October 11, 2012 meeting. He further testified that he did not expect to see Logterman and Mawhinney at the meeting.

¶13 Board member Mawhinney testified that he could not work at his farm due to rain and decided to attend the meeting. Pulera attempts to cast doubt on Mawhinney’s credibility by asserting that weather records indicate that there was no rain in the area on October 11, 2012. However, Mawhinney’s testimony was not that it had rained on the morning of October 11, 2012, as Pulera characterizes it. Rather, Mawhinney testified, “Dennis was originally going to go. And then it rained, so I couldn’t work that day.” The weather records submitted by Pulera show that, although there was no rain on October 11, 2012, there was, in fact, rain in the area on October 10, 2012. Pulera does not offer any facts from the summary judgment record to contradict the testimony of the three Board members

that they had not all planned on attending the meeting. Accordingly, the circuit court properly entered summary judgment in favor of the Board.

*By the Court.*—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5. (2015-16).

